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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 GREGORIO C. FUNTANILLA, JR., No. CIV-S-01-2262 MCE/PAN P
12 Petitioner,
13 v. ORDER
14 CHERYL PLILER,
15 Respondent.
16 _____/

17 Petitioner, a state prisoner proceeding pro se, has timely
18 filed a notice of appeal of this court's July 26, 2005, denial of
19 his application for a writ of habeas corpus. Before petitioner
20 can appeal this decision, a certificate of appealability must
21 issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

22 A certificate of appealability may issue under 28 U.S.C.
23 § 2253 "only if the applicant has made a substantial showing of
24 the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

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1 The court must either issue a certificate of appealability
2 indicating which issues satisfy the required showing or must
3 state the reasons why such a certificate should not issue. Fed.
4 R. App. P. 22(b).

5 For the reasons set forth in the magistrate judge's April
6 27, 2004, findings and recommendations, petitioner has not made
7 a substantial showing of the denial of a constitutional right.
8 Accordingly, a certificate of appealability should not issue in
9 this action.

10 IT IS SO ORDERED.

11 DATED: November 15, 2005

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15 MORRISON C. ENGLAND, JR.
16 UNITED STATES DISTRICT JUDGE
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